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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/531,162

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Peter Zatloukal

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3236

60172

7590

06/03/2010

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EXAMINER

ALI, FARHAD

ART UNIT

PAPER NUMBER

2446

MAIL DATE

DELIVERY MODE

06/03/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<b>Application No.</b> 10/531,162	<b>Applicant(s)</b> ZATLOUKAL ET AL.	
	<b>Examiner</b> FARHAD ALI	<b>Art Unit</b> 2446	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 17 May 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1-3, 5-14, 16-20, 29-31 and 33.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

/Benjamin R Bruckart/  
Primary Examiner, Art Unit 2446

Continuation of 11. does NOT place the application in condition for allowance because: The applicant has argued that Donaldson fails to teach a method as recited in claim 1 which comprises "incrementally increasing, by the mobile client device, the second audio volume level from the initial non-intrusive lower volume level to a discernable volume level higher than the first audio volume level, said incrementally increasing further comprising: first, increasing the second audio volume level by a first predetermined increment, second, determining that the user has not responded to the second audio signal, and third, increasing the second audio volume level by a second predetermined increment".

The examiner respectfully disagrees. Donaldson teaches in Column 5 lines 50-54, "For each possible audio source pair in the handheld device, the prioritization rules establish the relative gain applied to the sources, the absolute levels may be set in relation to a fixed decibel level, or it may be referenced to the level or presence of one of the sources. Alternatively, prioritization between a signal event and a continuous source may be dependent upon the presence of a continuous source, regardless of the immediate sound level". The examiner asserts that the presence of a source constitutes a determination of the users response to the audio signal, as once a user responds to the signal it will become inactive, for example in Col 6 lines 35-38 Donaldson teaches "In response to audio source B becoming active, the system causes Mixer input B to be reduced to an attenuated level A.sub.A. A time T.sub.2 audio source B becomes inactive and Mixer input A is restored to it previous level A.sub.1". Furthermore, the above disclosure in Column 5 lines 50-54 recites "the absolute levels may be set in relation to a fixed decibel level, or it may be referenced to the level or presence of one of the sources".

In response to the first and second predetermined increment, the examiner asserts that the example in column 2 lines 52-62 as cited above teaches such limitations as one audio source can be initially incremented according to a predetermined signal ratio (lines 55-58), and afterwards the attenuation or gain of one or both sources is adjusted such that a new signal ratio is established (lines 60-62), indicating a second increment.

The examiner advises the applicant to elaborate upon the limitation regarding "determining that the user has not responded" in the claims as well as the predetermined increments and their relationship with each other.